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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/891,005	06/25/2001	Michael Shawn Giffin	SNY-P4260	9424
24337	7590	11/02/2005		
MILLER PATENT SERVICES 2500 DOCKERY LANE RALEIGH, NC 27606			EXAMINER NGUYEN, QUANG N	
			ART UNIT 2141	PAPER NUMBER
DATE MAILED: 11/02/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/891,005

Applicant(s)

GIFFIN ET AL.

Examiner

Quang N. Nguyen

Art Unit

2141

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: None.
Claim(s) rejected: 1-20, 29 and 30.
Claim(s) withdrawn from consideration: None.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attachment.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Detailed Action

1. This Office Action is responsive to the Response to Final Office Action filed on 09/07/2005. Claims 1-20 and 29-30 are presented for examination.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claims 1-2, 9-10 and 15-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Rhoads (US 6,311,214).**

4. As to claim 1, Rhoads teaches a method, comprising:

storing a music file representing a musical selection for a first user (*at a predetermined location, a personal music library maintained by a user can be stored at a remote web site*) (Rhoads, C46: L28-45);

mapping the first user to the music file (*the personal music library maintained by the user can be stored at a remote web site protected with a user-set password and can be downloaded whenever it is convenient*) (Rhoads, C46: L28-45);

mapping other users who wish to store the musical selection to the music file (*the personal music library could be remotely sited and consolidated, i.e., merged, with the music libraries of many other users at a central location*) (Rhoads, C46: L42-45);

receiving a request from any of the mapped users for playback of the music file (*in response to the requests for playback, the music library can be downloaded whenever it is convenient*) (Rhoads, C46: L28-34); and

transmitting the music file to the user that sent the request for playback using wireless transmission, as a streaming music file (*the personal music library can be equipped with wireless capabilities adapted to provide music to the user's playback devices such as MP3 player by short-range wireless broadcast*) (Rhoads, C46: L35-53).

5. As to claim 2, Rhoads teaches the method of claim 1, further comprising:

receiving from the first user a request to store the music file; and wherein the storing is carried out as a response to the request to store the music file (*receiving a user request to store the music file at the predetermined location*) (Rhoads, C46: L24-34).

6. Claims 9-10 are corresponding storage medium claims of method claims 1-2; therefore, they are rejected under the same rationale.

7. Claims 15-16 are corresponding data center claims of method claims 1-2; therefore, they are rejected under the same rationale.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. **Claims 3-8, 11-14 17-20 and 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhoads, in view of Kurihara et al. (US 2002/0023101 A1), hereinafter referred as Kurihara.**

10. As to claims 4-5, Rhoads teaches the method of claim 1, but does not explicitly teach charging each of the users mapped to the music file a fee for storage of the music file and for transmitting the music file to the user that sent the requests for playback.

In a related art, Kurihara teaches a content managing system and method, wherein each user pays the fee for the user area 18 of the customer file storage 13 so

each user can store the file of a new content to the user area 18, delete the file of a content from the user area 18, move the file of a content stored in the user area 18, and download the file of a content stored in the user area 18 to the user terminal unit 2 (Kurihara, paragraph [0044]).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the teachings of Rhoads and Kurihara to have the user paying the fee for storage and transmission of the music file since such methods were conventionally employed in the art for the system to provide users with storage area in the range of the contracted capacity to add (upload), delete, move and access (download) content (music file) stored in the assigned user area.

11. As to claim 6, Rhoads-Kurihara teaches the method of claim 1, further comprising uploading the music file from the first user prior to the storing (*the user can store the file of his or her content to the user area 18*) (Kurihara, paragraph [0044]).

12. As to claims 3 and 7-8, Rhoads-Kurihara teaches the method of claim 1, further comprising obtaining the music file from a commercial music source prior to the storing and paying a royalty for use of the music file (*each user can purchase the file of content stored in the content library 11 and store the file of the purchased content to the user area 18 of the customer file storage 13*) (Kurihara, paragraphs [0046] and [0057]).

13. Claims 11-14 are corresponding storage medium claims of method claims 4-7; therefore, they are rejected under the same rationale.

14. Claims 17-20 are corresponding data center claims of method claims 4-7; therefore, they are rejected under the same rationale.

15. Claim 29 is a corresponding combination method claim of method claims 1-5 and 7; therefore, it is rejected under the same rationale.

16. Claim 30 is a corresponding combination data center claim of method claims 1-7; therefore, it is rejected under the same rationale.

Response to Arguments

17. In the remarks, Applicant argued in substance that

(A) It is believed clear that the cited references taken singly or in combination fail to provide adequate teachings to anticipate or obviate “mapping other users who wish to store the musical selection to the music file”, as recited in the invention.

As to point (A), **Rhoads (US 6,311,214)** teaches a method and system for music asset management/commerce, wherein at a predetermined location, a personal music library (*i.e., a music file representing a musical selection*) maintained by a user can be

stored at a remote web site, usually protected with a user-set password and can be downloaded whenever it is convenient (*i.e., storing a music file representing a musical selection for a first user and mapping the first user to the music file*) (Rhoads, C46: L28-45). Rhoads also teaches the personal music library (*i.e., the music file representing the musical selection*) could be remotely sited and consolidated, i.e., merged, with the music libraries of many other users at a central location (*i.e., since the personal music library of a first user could be consolidated/merged with other users' personal music library to become one music library or the same music library, hence, the teaching of Rhoads could be used for "mapping other users who wish to store the musical selection to the music file"*) (Rhoads, C46: L42-45).

Also, in a related art, Kurihara (US 2002/0023101 A1) teaches a content managing system and method, wherein when a user purchases a content, a file purchase request command is transmitted from the user terminal unit 2 to the delivery managing server 16 through the network 3. The delivery managing server 16 sends a copy command for copying or a link command for linking the file of the content to the user area 18 for the user to the library managing server 12. Thus, the content purchasing process can be accomplished as a linking process for linking a file from the content library 11 to the user area 18 (*i.e., mapping users to the same purchased content/file*) (Kurihara, paragraphs [0050-0052]).

Hence, Prior Arts do teach or suggest, "mapping other users who wish to store the musical selection to the music file", as recited in the invention.

18. Applicant's arguments as well as request for reconsideration filed on 09/07/2005 have been fully considered but they are not deemed to be persuasive.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang N. Nguyen whose telephone number is (571) 272-3886.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's SPE, Rupal Dharia, can be reached at (571) 272-3880. The fax phone number for the organization is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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